



9200/1743 DAC

PATENT  
Customer No. 22,852  
Attorney Docket No. 7414.0018

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
)  
Hon SHIN et al. ) Group Art Unit: 1743  
)  
Application No.: 09/496,408 ) Examiner: Jill Alice WARDEN  
)  
Filed: February 2, 2000 ) Confirmation No. 6158  
)  
For: APPARATUS AND METHOD )  
FOR EJECTING SAMPLE )  
WELL TRAYS )

RECEIVED  
NOV 03 2004  
TC 1700

**Mail Stop Petition**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PETITION TO WITHDRAW ERRONEOUS HOLDING OF ABANDONMENT**

Applicants respectfully request reconsideration and withdrawal under 37 C.F.R. § 1.181 of the holding of abandonment in the above-identified patent application on the basis that there is no abandonment in fact. See M.P.E.P. §§ 711.03(c) and 1002.02(c).

Applicants received a Notice of Abandonment, mailed September 17, 2004 ("Notice"). A copy of the Notice is enclosed as Attachment A. The Notice states that: "This application is abandoned in view of ... The decision by the Board of Appeals and Interferences rendered on 20 July 2004 and because the period for seeking court review of the decision has expired and there are no allowed claims." That is incorrect, because claims 43-49 remain pending in this application and are allowed.

In the July 20, 2004 Order, the Board of Appeals and Interferences held that Applicants were not entitled to claims 1, 2, 4, 6-8, 10, 18-23, and 40-42 of the application. A copy of the July 20, 2004 Order is enclosed as Attachment B. Claims 43-49 of the application, which were designated as not corresponding to the count of the interference, remain pending. In fact, the U.S. Patent and Trademark Office (PTO) has indicated that those claims were allowed. In the Interference Initial Memorandum (PTO-850) dated August 8, 2003, that was attached to a Notice Declaring Interference, the PTO indicated that claims 43-49 were patented or patentable pending claims not corresponding to the count. In the Notice Declaring Interference dated August 13, 2003, the PTO indicated at page 5 that claims 43-49 of the Shin application (09/496,408) do not correspond to the count. Copies of the Interference Initial Memorandum and Notice Declaring Interference are enclosed as Attachments C and D, respectively. Further, in an Examiner's Amendment and another Communication mailed May 15, 2003, the PTO indicated that the claims 43-49 were allowable. Copies of the May 15, 2003 papers are enclosed as Attachments E and F, respectively. Therefore, claims 43-49 remain pending and allowed in this application.

Because claims 43-49 are pending and allowed, Applicants request under 37 C.F.R. § 1.181 that the holding of abandonment be withdrawn. Applicants also request that a Notice of Allowance be mailed.

No fee is believed to be due in connection with the filing of this Petition. Please grant any extensions of time required to enter this Petition and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW  
GARRETT & DUNNER, L.L.P.

Dated: October 26, 2004

By: Troy E. Grabow  
Troy E. Grabow  
Reg. No. 43,440



UNITED STATES PATENT AND TRADEMARK OFFICE

*MPB/JKH/TEG*

UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/496,408

02/02/2000

Hon Siu Shin

7414.0018

6158

22852

7590

09/17/2004

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP

1300 I STREET, NW  
WASHINGTON, DC 20005

EXAMINER

WARDEN, JILL ALICE

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED  
NOV 03 2004  
TC 1700

RECEIVED

OCT 26 2004

FINNEGAN, HENDERSON,  
FARABOW, GARRETT & DUNNER, LLP

*Revised due 11/17/04*

*MPB/JKH-2004*

# Notice of Abandonment

Application No.

09/496,408

Examiner

Jill A. Warden

Applicant(s)

SHIN ET AL.


Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

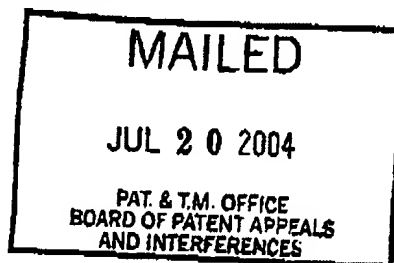
1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☒ The decision by the Board of Patent Appeals and Interference rendered on 20 July 2004 and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

  
Jill A. Warden  
SPE  
Art Unit: 1743

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

**THIS DOCUMENT WAS NOT WRITTEN FOR PUBLICATION  
AND IS NOT BINDING PRECEDENT OF THE BOARD**

Filed by: Trial Section Merits Panel  
Mail Stop INTERFERENCE  
Board of Patent Appeals and Interferences  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
Tel: 703-308-9797 Fax: 703-305-0942



Paper No. 40

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

---

**DONAT ELSENER and DANIEL RYSER,**  
Junior Party,  
(Patent 6,555,792 B1)<sup>1</sup>

v.

**HON SIU SHIN, JEW KWEE GUI, ADRIAN FAWCETT,  
KENNETH P. CHAO, GARY L. BORDENKIRCHER,  
JESSICA BARZILAI AND DONALD R. SANDELL,**  
Senior Party  
(Application 09/496,408)<sup>2</sup>

---

Patent Interference No. 105,141

---

Before SCHAFFER, LEE and MEDLEY, Administrative Patent Judges.

LEE, Administrative Patent Judge.

**JUDGMENT – RULE 602**

---

<sup>1</sup> Based on Application 09/672,726, filed September 28, 2000. The real party in interest is Applera Corporation. Paper No. 36.

<sup>2</sup> Filed February 2, 2000. The real party in interest is Applera Corporation.

Interference No. 105,141  
Elsener v. Shin

On July 15, 2004, a response to the show cause order of June 15, 2004, was filed, in which the common assignee Applera Corporation elects the junior party Elsener as being entitled to priority as to the subject matter of the count. Accordingly, it is

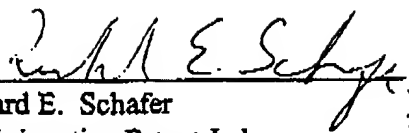
**ORDERED** that judgment as to the subject matter of the sole count, Count 1, is hereby entered against senior party HON SIU SHIN, JEW KWEE NGUI, ADRIAN FAWCETT, KENNETH P. CHAO, GARY L. BORDENKIRCHER, JESSICA BARZILAI and DONALD R. SANDELL;

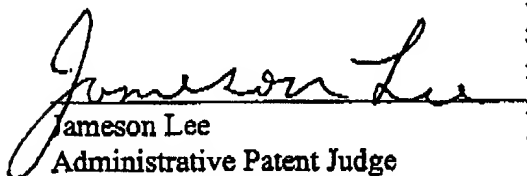
**FURTHER ORDERED** that senior party HON SIU SHIN, JEW KWEE NGUI, ADRIAN FAWCETT, KENNETH P. CHAO, GARY L. BORDENKIRCHER, JESSICA BARZILAI and DONALD R. SANDELL is not entitled to claims 1, 2, 4, 6-8, 10, 18-23 and 40-42 of its involved application 09/496,408;

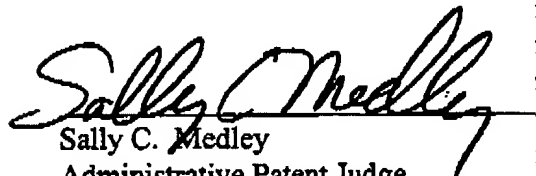
**FURTHER ORDERED** that if there is a settlement agreement, the parties should note the requirements of 35 U.S.C. § 135(c) and 37 CFR § 1.666; and

**FURTHER ORDERED** that a copy of this judgment be filed in the respective involved application or patent of the parties.

Interference No. 105,141  
Elsener v. Shin

  
Richard E. Schafer  
Administrative Patent Judge

  
Jameson Lee  
Administrative Patent Judge

  
Sally C. Medley  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS  
AND  
INTERFERENCES



Interference No. 105,141  
Elsener v. Shin

By Facsimile:

Attorney for junior party Elsener:

415-576-0300 (Fax)  
Guy W. Chambers, Esq.  
TOWNSEND AND TOWNSEND AND CREW LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, California 94111-3834

Attorney for senior party Shin:

202-408-4400 (Fax)  
M. Paul Barker, Esq.  
FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.  
1300 I Street, N.W., Suite 700  
Washington, D.C. 20005-3315

# INTERFERENCE INITIAL MEMORANDUM

Count # \_\_\_\_\_

**Board of Patent Appeals and Interferences:**

Interference is proposed involving the following 2 parties

PARTY SHIN et al	APPLICATION NO. 09/496,408	FILING DATE 02 February 2000	PATENT NO., IF ANY	ISSUE DATE, IF ANY
If the involved case is a patent, have its maintenance fees been paid? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not due yet				
Proposed priority benefit (list all intervening applications necessary for continuity):				
COUNTRY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
The claim(s) of this party corresponding to this count:				
PATENTED OR PATENTABLE PENDING CLAIMS 1,2,4,6-8,10,18-23 and 40-42			UNPATENTABLE PENDING CLAIMS	
The claim(s) of this party NOT corresponding to this count:				
PATENTED OR PATENTABLE PENDING CLAIMS 43-49			UNPATENTABLE PENDING CLAIMS	
PARTY Elsener et al	APPLICATION NO. 09/672,726	FILING DATE 28 September 2000	PATENT NO., IF ANY 6,555,792 B1 8/12/03	ISSUE DATE, IF ANY 29 April 2003
involved case is a patent, have its maintenance fees been paid? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not due yet				
Proposed priority benefit (list all intervening applications necessary for continuity):				
COUNTRY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
Switzerland	1782/99	28 September 1999		
<i>not accorded benefit 7/2-8/12/03</i>				
The claim(s) of this party corresponding to this count:				
PATENTED OR PATENTABLE PENDING CLAIMS 1-14			UNPATENTABLE PENDING CLAIMS	
The claim(s) of this party NOT corresponding to this count:				
PATENTED OR PATENTABLE PENDING CLAIMS			UNPATENTABLE PENDING CLAIMS	
<i>(Check off each step, if applicable)</i> <b>INSTRUCTIONS</b>				
<input checked="" type="checkbox"/> 1. Obtain all files listed above. <input checked="" type="checkbox"/> 2. Confirm that the proposed involved claims are still active and all corrections and entered amendments have been considered. The patents must not be expired for, among other things, failure to pay a maintenance fee (Check PALM screen 2970). <input checked="" type="checkbox"/> 3. If one of the involved files is a published application or a patent, check for compliance with 35 U.S.C. 135(b). <input checked="" type="checkbox"/> 4. Obtain a certified copy of any foreign benefit documents where necessary (37 CFR 1.55(a)). <input checked="" type="checkbox"/> 5. Discuss the proposed interference with an Interference Practice Specialist in your Technology Center.				
DATE May 2003	PRIMARY EXAMINER (Signature) <i>John Warden</i>		ART UNIT 1743	TELEPHONE NO. (703)306-5697
DATE 8/8/03	INTERFERENCE PRACTICE SPECIALIST or TECHNOLOGY CENTER DIRECTOR (signature) <i>Christine Anne Turvey</i>		TELEPHONE NO. 703-308-2526	

Art Unit: 1743

Appl./Pat. #	09/496,408	US 6,555,792
	Claim 19	Claim 5
Structure set forth in claims of each:	<p>-cover (110) which imparts a downward force on the top of a sample well tray (16) to press the sample wells (24) into opening of a sample block (14) when the cover is in the closed position. Note: Cover can be heated or unheated, see page 10, lines 1-2 of the instant specification. See Figure 7.</p> <p>-Sample block (14)with openings for receiving a wells (24) of a sample well tray (16).</p> <p>-plurality of spring devices (50) positioned between the sample block and the sample well tray.</p> <p>-a plurality of receiving portions (52) in the sample block wherein each spring element is inserted into the receiving portions.</p>	<p>-cover (14) which can be lowered and raised relative to the heating surface, and serves for pressing the microtitre plate against the heating surface.</p> <p>-Heating plate (1) with indentations for holding wells of microtitre plate (13). Figures 4a-4b. Note: the heating plate not disclosed in specification as possessing any heating elements but provided to ensure good heat transfer between microtitre plate and plate (column 2, lines 51-52). It is known in the art to use a heated cover to provide the heat to the microtitre plate.</p> <p>-plurality of elastically compressible lifting devices (8) distributed for rising and detaching the microtitre plate from the heating plate. Elastically compressible lifting devices defined within the specification as "coil springs" (column 2, lines 52-53).</p> <p>- a plurality of blind holds (6) in the heating surface wherein each lifting element is inserted into the blindholes.</p>

\*Claims 43-49 do not correspond to the count because it would not have been obvious to provide a sample well try holder for holding the sample tray therein, the sample well tray being movable relative to the sample well tray holder.

Application/Control Number: 09/496,408

Page 3

Art Unit: 1743

*Count*  
1  
Claim ~~X~~ of USP (6,555,792) or claim ~~X~~ of application 09/496,408.

APJ Lee

8/12/03

Filed by: Jameson Lee  
Administrative Patent Judge  
Mail Stop Interference  
P.O. Box 1450  
Alexandria Va 22313-1450  
Tel: 703-308-9797  
Fax: 703-305-0942

Paper 1

Filed  
13 August 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

DONAT ELSENER and DANIEL RYSER,

Junior Party,  
(Patent 6,555,792 B1),

v.

HON SIU SHIN, JEW KWEE NGUI, ADRIAN FAWCETT,  
KENNETH P. CHAO, GARY L. BORDENKIRCHER,  
JESSICA BARZILAI and DONALD R. SANDELL,

Senior Party,  
(Application 09/496,408).

Patent Interference No. 105,141

NOTICE DECLARING INTERFERENCE  
(37 CFR § 1.611)

Part A. Declaration of interference

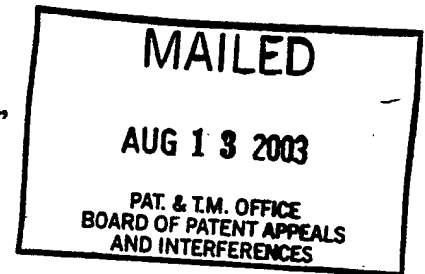
An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties.  
Details of the application(s), patent (if any), reissue application (if any), count(s) and claims  
designated as corresponding or as not corresponding to the count(s) appear in Parts E and F of

-1-

**RECEIVED**

AUG 14 2003

Finnegan, Henderson, Farabow,  
Garrett & Dunner, L.L.P.



this NOTICE DECLARING INTERFERENCE.

**Part B. Judge designated to handle the interference**

Administrative Patent Judge Jameson Lee has been designated to handle the interference.

37 CFR § 1.610(a).

**Part C. Standing order**

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

**Part D. Conference call to set dates**

A telephone conference call to set dates for taking action in the interference is scheduled for 11:00 a.m. on 1 October 2003 (the call will be initiated from the PTO).

No later than two business days prior to the conference call, each party shall file and serve by facsimile a list of the preliminary motions the party intends to file. See STANDING ORDER ¶ 10.

A copy of a "sample" order setting times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE. Counsel are encouraged to discuss the order prior to the conference call with the view to coming to some agreement as to dates for taking action. A typical preliminary motion period lasts approximately nine (9) months. Counsel should be prepared to justify any request for a shorter or longer period.

**Part E. The parties involved in this interference are:**

**Junior Party**

Named inventor: DONAT ELSENER, Mannedorf, Switzerland  
DANIEL RYSER, Stafa, Switzerland

Patent: 6,555,792 B1, granted 29 April 2003, based on  
Application 09/672,726, filed 28 September 2000

Title: Thermocycler and lifting element

Assignee: Tecan Schweiz AG

Accorded Benefit: none

Attorneys: See last page

Address: See last page

**Senior Party**

Named Inventor: HON SIU SHIN, Singapore  
JEW KWEE NGUI, Singapore  
ADRIAN FAWCETT, Pleasanton, CA  
KENNETH P. CHAO, San Francisco, CA  
GARY L. BORDENKIRCHER, Pacifica, CA  
JESSICA BARZILAI, Mountain View, CA  
DONALD R. SANDELL, San Jose, CA

Application: 09/496,408, 2 February 2000

Title: Apparatus and method for ejecting sample  
well trays

Assignee: PE Corporation

Accorded Benefit: none

Attorneys: See last page

Address: See last page



**Part F. Count and claims of the parties**

**Count 1**

Claim 1 of Elsener's Patent 6,555,792 B1

or

Claim 1 of Shin's Application 09/496,408

The claims of the parties are:

Elsener et al.:	1-14
Shin et al.:	1, 2, 4, 6-8, 10, 18-23 and 40-49

The claims of the parties which correspond to Count 1 are:

Elsener et al.:	1-14
Shin et al.:	1, 2, 4, 6-8, 10, 18-23 and 40-42

The claims of the parties which do not correspond to Count 1 are:

Elsener et al.:	None
Shin et al.:	43-49

**Part G. Heading to be used on papers**

The following heading shall be used on papers filed in the interference. See STANDING ORDER ¶ 3.5.

---

Filed on behalf of [name of party] Paper \_\_\_\_<sup>1</sup>  
By: Name of lead counsel  
Name of backup counsel  
Street address  
City, State, and Zip-Code  
Tel:  
Fax:

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge Jameson Lee)

---

DONAT ELSENER and DANIEL RYSER,  
Junior Party,  
(Patent 6,555,792 B1),

v.

HON SIU SHIN, JEW KWEE NGUI, ADRIAN FAWCETT,  
KENNETH P. CHAO, GARY L. BORDENKIRCHER,  
JESSICA BARZILAI and DONALD R. SANDELL,  
Senior Party,  
(Application 09/496,408).

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Patent Interference No. 105,141

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TITLE OF PAPER

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<sup>1</sup> Leave a blank line because the board assigns the paper number.

#### **Part H. Summary of dates for taking action**

Times for taking action are set out in the following sections of the STANDING ORDER:

- ¶ 4: date for identifying lead and backup counsel.
- ¶ 5: date for identifying any real party in interest.
- ¶ 6: date for requesting copies of involved and benefit applications and patents.
- ¶ 7: date for accomplishing certain discovery.
- ¶ 8: date for filing clean copy of claims.
- ¶ 9: date for filing clean copy of claims in cases with drawings or claims containing a means plus function limitation.
- ¶ 10: date for filing list of proposed preliminary motions.
- ¶ 13.10.2: dates for filing oppositions to Rule 635 miscellaneous motions and dates for filing replies to oppositions.
- ¶ 14.1.1: date for objecting to admissibility of evidence.
- ¶ 14.2: date for serving supplemental affidavits or evidence to respond to objection to admissibility of evidence.
- ¶ 14.3: dates when cross-examination can take place.
- ¶ 15.2: dates for taking action with respect to settlement discussions.

**Part I. Order form for requesting file copies**

**FILE COPY REQUEST**  
**Interference 105,141**

A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a circle by hand around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPTO Deposit Account No. \_\_\_\_\_
2. Complete address, including street, city, state, ZIP code and telephone number (do not list a Post Office box because file copies are sent via commercial overnight courier).

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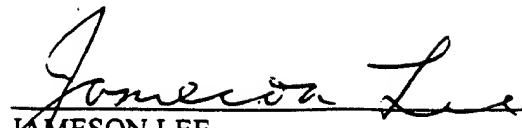
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Telephone, including area code: \_\_\_\_\_

**Part J. Signature of administrative patent judge**

  
JAMESON LEE  
Administrative Patent Judge

Date: 8/13/03

Enc:

Copy of STANDING ORDER

Copy of PTO 850

Copy of order used for setting times for taking action in the preliminary motion phase of the interference

Copy of order used for setting times for taking action in the testimony and briefing phases of the interference

Copy of Application claims 09/496,408

Copy of Patent 6,555,792 B1

Revised May 2003

cc (via Federal Express):

Attorney for ELSENER:

Peter C. Michalos, Esq.  
NOTARO & MICHALOS P.C.  
100 Dutch Hill Road  
Suite 110  
Orangeburg, N.Y. 10963-2100

Attorney for SHIN:

Robert F. Ziems  
FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER LLP  
1300 I Street, N.W.  
Washington, D.C. 20005



OCT 26 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
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Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/496,408	02/02/2000	Hon Siu Shin	7414.0018	6158

22852 7590 05/15/2003

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
1300 I STREET, NW  
WASHINGTON, DC 20005

EXAMINER

BEX, PATRICIA K

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 05/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED

MAY 19 2003

FINNEGAN, HENDERSON,  
FARABOW, GARRETT & DUNNER, L.L.P.

✓ 5-16-03

### EXAMINER'S AMENDMENT

1. Claims 1-2, 4, 6-8, 10, 18, 19-23, 40-49 are allowable.
2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Troy Grabow on May 7, 2003.

The application has been amended as follows:

Claim 19, last paragraph, line 3, "urging mechanism", has been changed to /the plurality

Di of spring devices/.

3. The following is an examiner's statement of reasons for allowance: the instant claims are drawn to an apparatus for thermally cycling biological samples comprising: a sample block having a plurality of openings for receiving sample wells of a sample well tray therein, the sample well having closed sample well bottoms configured to contain a sample, the plurality of openings for receiving sample wells being configured to contact an outer surface of a corresponding sample well. None of the prior art teaches or suggests a thermal cycling apparatus wherein the sample block further comprises: a plurality of receiving portions in a top surface thereof; and a plurality of spring devices interposed between the sample block and the sample well tray, the plurality of spring devices being positioned at least partially in the plurality of receiving portions, the plurality of spring devices imparting an urging force on the sample tray,



Art Unit: 1743

openings in the sample block upon removal of a pressing force imparted on the top of the sample well tray for pressing the sample wells into the openings of the sample block.

4. All claims are allowable. However, due to a potential interference, ex parte prosecution is SUSPENDED FOR A PERIOD OF 6 MONTHS from the date of this letter. Upon expiration of the period of suspension, applicant should make an inquiry as to the status of the application.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Bex whose telephone number is (703) 306-5697. The examiner can normally be reached on Mondays-Thursdays, alternate Fridays from 6:00 am to 3:30 pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 308-4037.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

*Kathryn Bex*  
P. Kathryn Bex  
Patent Examiner  
AU 1743  
May 14, 2003

*Jill Warden*  
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Supervisory Patent Examiner  
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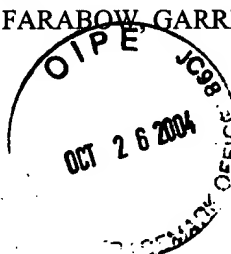
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Art Unit: 1743

All claims are allowable. However, due to a potential interference, *ex parte* prosecution is SUSPENDED FOR A PERIOD OF 6 MONTHS from the date of this letter. Upon expiration of the period of suspension, applicant should make an inquiry as to the status of the application.

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